

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

ELMEDIN TINJACK, *et. al.*

Plaintiffs,

vs.

BIANCHI USA, INC., *et. al.*

Defendants

CASE NO: 22CV-06-3972

JUDGE: C. BROWN

**ANSWER OF DEFENDANT,
BACKCOUNTRY.COM, LLC WITH
CROSS-CLAIM**

**JURY DEMAND ENDORSED
HEREON**

Now comes Defendant, BACKCOUNTRY.COM, L.L.C., (*Improperly identified as BACKCOUNTRY.COM, LLC, d.b.a. CompetitiveCyclist.com*) by and through counsel, and for its ANSWER to the PLAINTIFFS' COMPLAINT, hereby states as follows:

1. BACKCOUNTRY.COM, LLC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 11, 12, 13, 14, 16, 17, 19, 21, 23, 26 and 27 of the Complaint.

2. BACKCOUNTRY.COM, LLC denies that it is a Utah corporation doing business as Competitivecyclist.com. BACKCOUNTRY.COM, LLC admits that it is the owner and operator of Competitivecyclist.com and further admits that Competitivecyclist.com is an online

retailer of bicycles, including Bianchi bicycles. BACKCOUNTRY.COM, LLC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraphs 2, 3, 4 and 5 of the Complaint.

3. BACKCOUNTRY.COM, LLC admits that Plaintiff Elmedin Tinjack purchased a frameset manufactured and designed by Co-Defendant BIANCHI USA, Inc. (or a related entity) online through competitivecyclist.com along with several other bicycle components that were likely assembled and then shipped directly to Plaintiff, Elmedin Tinjack. BACKCOUNTRY.COM, LLC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraphs 6, 7, 8, 9, 10, 20 and 42 of the Complaint.

4. BACKCOUNTRY.COM, LLC denies that allegations contained in Paragraphs 15, 18, 24, 29, 30, 31, 33, 34, 35, 36, 37, 39, 40, 41, 43, 44, 45, 46, 47 and 48 of the Complaint.

5. BACKCOUNTRY.COM, LLC has never received notice of any recall for the product/components at issue in this case, but admits that Defendant Bianchi may have issued recalls for other products. BACKCOUNTRY.COM, LLC denies the remaining allegations contained in Paragraphs 22 and 28 of the Complaint.

6. BACKCOUNTRY.COM, LLC admits that Ohio law speaks for itself. BACKCOUNTRY.COM denies that it violated or breached any product liability or other laws and further denies the remaining allegations contained in Paragraphs 25 and 32 of the Complaint.

7. BACKCOUNTRY.COM, LLC admits the allegations contained in Paragraph 38 of the Complaint.

AFFIRMATIVE DEFENSES

8. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
9. Plaintiff's common law claims have been abrogated by Ohio Product Liability Act, OPLA.
10. BACKCOUNTRY.COM, LLC did not manufacture or design the product or components at issue.
11. The product and components in question was/were not defective.
12. Plaintiffs' alleged damages were caused by a substantial alteration to the product/components in question.
13. Plaintiffs' alleged damages were caused by misuse of the product/components in question.
14. Any alleged damages sustained by Plaintiffs were proximately caused by third parties over whom this answering Defendant had neither control nor any right to control.
15. Plaintiffs' alleged damages were the result of intervening and/or superseding acts or omissions of persons and/or entities other than this answering Defendant.
16. Any risk associated with the product/components at issue was an open and obvious risk and/or a risk that is a matter of common knowledge and therefore there was no duty to warn the Plaintiffs of that risk.
17. The allegations and claims in the Complaint are barred by the doctrine of spoliation of evidence.
18. Plaintiff has failed to mitigate his/her damages.
19. Plaintiffs' injuries, if any, were caused in whole or in part by his/her own negligence.

20. If Plaintiff did sustain any injuries or damages, as alleged in the Complaint, then Plaintiff assumed the risk of such injuries or damages and assumed the risk of the incident set forth in the Complaint.

21. The product/components meet(s) the state-of-the-art as it existed at the time of manufacture, assembly and/or the alleged injury.

22. The allegations and claims in the Complaint are barred because the events were caused by an Act of God.

TRIAL BY JURY IS HEREBY DEMANDED.

WHEREFORE, having fully answered, Defendant, BACKCOUNTRY.COM, LLC demands that Plaintiffs' Complaint be denied and dismissed at Plaintiffs' costs herein.

Respectfully submitted,

/s/ Matthew M. Duffy

Matthew M. Duffy (Ohio #0071371)

SENIOR TRIAL ATTORNEY

Salaried Employee of The Hanover Insurance Company

9229 Delegates Row, Suite 100

Indianapolis, Indiana 46240

(mailing address only)

(216) 328-2012, Direct Line

maduffy@hanover.com

(Ohio/Cleveland Office)

*Attorney for Defendant, BACKCOUNTRY.COM,
LLC*

CROSS-CLAIM AGAINST DEFENDANTS, BIANCHI USA, INC. AND CYCLEUROPE, USA, INC.

NOW COMES the Defendant, BACKCOUNTRY.COM, L.L.C., by and through counsel, and for its CROSS-CLAIM against DEFENDANTS BIANCHI USA, INC. AND CYCLEUROPE, USA, INC states as follows:

1. The allegations in the Complaint are incorporated herein, not for the purpose of admitting the truth thereof, but solely for the purpose of pleading the within Cross-Claim.

2. Plaintiffs' Elmedin and Miranda Tinjak's alleged injuries and damages, if any, were proximately caused by the negligence of the employees and/or agents and/or contractors of DEFENDANTS BIANCHI USA, INC. AND/OR CYCLEUROPE, USA, INC. while those employees and/or agents and/or contractors were working or performing duties within the scope of their employment and/or agency and/or contract with DEFENDANTS BIANCHI USA, INC. AND/OR CYCLEUROPE, USA, INC.

3. DEFENDANT BACKCOUNTRY.COM, L.L.C. states that if, in fact, it is liable to Plaintiffs for the alleged injuries and damages in the within action, of which it specifically denies, then DEFENDANTS, BIANCHI USA, INC. AND CYCLEUROPE, USA, INC. is/are liable for all or a portion of Plaintiffs' alleged injuries and damages, and Defendant BACKCOUNTRY.COM, L.L.C. is entitled to indemnification and contribution for all payments made to Plaintiffs in excess of its proportionate share of common liability.

Trial by jury is hereby demanded.

Respectfully submitted,

/s/Matthew M. Duffy

Matthew M. Duffy (Ohio #0071371)

SENIOR TRIAL ATTORNEY

Salaried Employee of The Hanover Insurance Company

9229 Delegates Row, Suite 100

Indianapolis, Indiana 46240

(mailing address only)

(216) 328-2012, Direct Line

Ohio/Cleveland Office

maduffy@hanover.com

*Attorney for Defendant, BACKCOUNTRY.COM,
L.L.C.*

CERTIFICATE OF SERVICE

A copy of the foregoing was sent this 15th day of July, 2022 *via email only* to the following:

JACOB J. BEAUSAY,

Attorney for Plaintiff

jjb@beausaylaw.com

And to:

Bianchi USA LLC

Defendant

2536 A Barrington Court

Hayward, CA 94545

and

CycleEurope, USA, Inc.

Defendant

2536 A Barrington Court

Hayward, CA 94545

Via Clerk of Courts

/s/Matthew M. Duffy

Matthew M. Duffy, Esq.
(Ohio Attorney No. #0071371)